

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

ROBERT SCHELSKE, *et al.*,

Plaintiffs,

v.

LLOYD J. AUSTIN, III,
United States Secretary of Defense, *et al.*,

Defendants.

No. 6:22-cv-0049-H

**DEFENDANTS' MOTION
TO DISMISS THE AMENDED COMPLAINT**

Defendants respectfully move to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(1). As explained in the accompanying brief, the Secretary of Defense has rescinded the challenged requirement that members of the armed forces be vaccinated against COVID-19. Any challenge to that requirement and the adverse actions associated with it is moot, and Plaintiffs' attempt to seek relief as to some hypothetical, future vaccination requirement is unripe. Additionally, Plaintiffs' challenges to adverse actions such as discharge characterizations and purported denied promotions are unexhausted and unripe, and their attempt to seek backpay is barred by sovereign immunity. Finally, Cadet Zakai Bufkin lacks standing to challenge the vaccination requirement because his discharge for consistently poor academic performance does not involve the enforcement of a vaccination requirement. This case should therefore be dismissed.

* * *

Dated: March 10, 2023

Respectfully submitted,

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